



**Texas Department of Insurance**  
**Division of Workers' Compensation**  
Medical Fee Dispute Resolution, MS-48  
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### PART I: GENERAL INFORMATION

Requestor Name and Address:	MFDR Tracking #: M4-05-5839-01
KINDRED HOSPITAL DALLAS 9525 GREENVILLE AVE DALLAS TX 75243-4116	DWC Claim #:
	Injured Employee:
Respondent Name and Box #:	Date of Injury:
DALLAS NATIONAL INSURANCE CO Box #: 20	Employer Name:
	Insurance Carrier #:

### PART II: REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Services rendered of like kind are allowed by other payors at a reasonable and customary rate well above the rate of 12% applied by Aspen Administrators. For this procedure specifically, ESIS representing Workers' Compensation program's allowable @59%, Travelers Ins representing Workers' Compensation program's allowable @ 79% Please find documentation attached to validate this statement."

**Amount in Dispute:** \$2,212.54

### PART III: RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "...it does not appear that the Requestor did not send a Request For Reconsideration to the Respondent. Therefore, this matter should be dismissed... Respondent paid the Requestor \$1,109.00 for the services described above. This rate corresponds with the methodology used by the Carrier's utilization company MedNet. This methodology involves taking the average of several factors. Those factors include, the Carrier's usual and customary reimbursement for the same procedure, the charges of other ambulatory surgery centers in the same area, the reasonable charge for the procedure, and the cost of the procedures with a markup for the profit margin. Requestor has unbundled the surgical procedure and now seeks \$2,212.54 more for this procedure... In conclusion, the Requestor has been paid for the services provided to the Claimant pursuant to a rate that is comparably fair and reasonable. It is unreasonable for the respondent to seek more payment than is owed."

### PART IV: SUMMARY OF FINDINGS

Date(s) of Service	Denial Code(s)	Disputed Service	Amount in Dispute	Amount Due
9/17/2004	R	Outpatient Surgery	\$2,212.54	\$0.00
<b>Total Due:</b>				<b>\$0.00</b>

### PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION

Texas Labor Code §413.011(a-d), titled *Reimbursement Policies and Guidelines*, and Division rule at 28 Texas Administrative Code §134.1, titled *Use of the Fee Guidelines*, effective May 16, 2002 set out the reimbursement guidelines.

This request for medical fee dispute resolution was received by the Division on March 28, 2005. Pursuant to Division rule at 28 TAC §133.307(g)(3), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on April 5, 2005 to send additional documentation relevant to the fee dispute as set forth in the rule.

1. For the services involved in this dispute, the respondent reduced or denied payment with reason code R – "Extent of injury." The respondent's position statement states that "IT should also be noted that the denial code 'R' was mistakenly used to reduce this medical bill in dispute to a fair and reasonable amount. However, there is no extent of injury issue in this matter, and this matter should proceed through the medical dispute process and not be held in abeyance." The Division finds that there is no dispute as to extent of injury. The carrier's denial reason is not supported. The services will therefore be reviewed per applicable Division rules and statutes.

2. Division rule at 28 TAC §133.304(m) effective July 15, 2000, 25 TexReg 2115, states that the sender of a medical bill may request medical dispute resolution if the sender of a medical bill has requested reconsideration. The requestor provided a certified mail receipt indicating that a request for reconsideration was mailed to TWCC, but the Division notes that this was the address of the Commission, not the insurance carrier. No documentation was found to support that the sender requested reconsideration from the insurance carrier. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.304(m).
3. This dispute relates to outpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 TAC §134.1, effective May 16, 2002, 27 TexReg 4047, which requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."
4. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
5. Division rule at 28 TAC §133.307(e)(2)(B), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires that the request shall include "a copy of each explanation of benefits (EOB)... relevant to the fee dispute or, if no EOB was received, convincing evidence of carrier receipt of the provider request for an EOB." Review of the documentation submitted by the requestor finds that the request does not include a copy of the EOB detailing the insurance carrier's response to the request for reconsideration. Neither has the requestor submitted convincing evidence of carrier receipt of the provider request for an EOB. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.307(e)(2)(B).
6. Division rule at 28 TAC §133.307(g)(3)(A), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including "documentation of the request for and response to reconsideration (when a provider is requesting dispute resolution on a carrier reduction or denial of a medical bill) or, if the carrier failed to respond to the request for reconsideration, convincing evidence of the carrier's receipt of that request." Review of the submitted evidence finds that the requestor has not provided documentation of the insurance carrier's response to the request for reconsideration or convincing evidence of the carrier's receipt of that request. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.307(g)(3)(A).
7. Division rule at 28 TAC §133.307(g)(3)(B), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including "a copy of any pertinent medical records." Review of the documentation submitted by the requestor finds that the requestor has not provided a copy of all pertinent medical records. The requestor submitted a copy of the operative report; however, the requestor did not provide a copy of the anesthesia record, recovery record, nursing notes, discharge summary, diagnostic reports or other records sufficient to support the services in dispute. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.307(g)(3)(B).
8. Division rule at 28 TAC §133.307(g)(3)(D), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that:
  - The requestor's position statement asserts that "Services rendered of like kind are allowed by other payors at a reasonable and customary rate well above the rate of 12% applied by Aspen Administrators. For this procedure specifically, ESIS representing Workers' Compensation program's allowable @59%, Travelers Ins representing Workers' Compensation program's allowable @ 79% Please find documentation attached to validate this statement."
  - Review of the submitted documentation finds that the requestor did not attach documentation to validate this statement. The requestor did not submit documentation to support that "For this procedure specifically, ESIS representing Workers' Compensation program's allowable @59%" or that "Travelers Ins representing Workers' Compensation program's allowable @ 79%".
  - The requestor has not articulated a methodology under which fair and reasonable reimbursement should be calculated.
  - The Division has previously found that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

"A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment

of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources.”

- In support of the requested reimbursement, the requestor submitted a redacted EOB. However, the EOB does not support, nor did the requestor submit documentation to support, that the services are the same or similar to the services in dispute. The requestor did not discuss or explain how the sample EOB supports the requestor’s position that additional payment is due. The carrier’s reimbursement methodology is not described on the redacted EOB. Nor did the requestor explain or discuss the sample carrier’s methodology or how the payment amount was determined for the sample EOB. The requestor did not discuss or provide documentation to support whether such payment, as reflected in the sample EOB, was typical for the services in dispute.
- The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement.
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement.
- The requestor does not discuss or explain how payment of the requested amount would ensure the quality of medical care, achieve effective medical cost control, provide for payment that is not in excess of a fee charged for similar treatment of an injured individual of an equivalent standard of living, consider the increased security of payment, or otherwise satisfy the requirements of Texas Labor Code §413.011(d) or Division rule at 28 TAC §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

9. The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307(e)(2)(B), §133.307(g)(3)(A), §133.307(g)(3)(B) and §133.307(g)(3)(D). Additionally, the Division concludes that the requestor did not meet the requirements of 28 Texas Administrative Code §133.304(m). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

#### PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code §413.011(a-d), §413.031 and §413.0311  
28 Texas Administrative Code §133.304, §133.307, §134.1  
Texas Government Code, Chapter 2001, Subchapter G

#### PART VII: DIVISION DECISION

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

#### DECISION:

**Grayson Richardson**

**9/17/2010**

Authorized Signature

Medical Fee Dispute Resolution Officer

Date

#### PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 TAC §148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**